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6. Vendor and Purchaser (§ 174*)—Rule of Compensation for Shortage in Number of Trees in Orchard Sold, Stated.—Where an apple orchard was purchased under representations that it contained 500 bearing trees, when there were in fact only 332, the value of the trees lost must be determined with reference to the price agreed upon for the whole estate.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 486, et seq.]

7. Reference (§ 65*)—Exception to Report Properly Overruled Where No Objection Was Made at Hearing.—An exception to the report of a commissioner appointed to assess damages for a shortage of trees in an orchard purchased that the wrong measure of damages was used was properly overruled, where no objection to evidence on that ground was made until the commissioner had made his finding, and no rebuttal testimony was introduced.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 565.]

Appeal from Circuit Court, Bedford County.

Bill by W. B. Holland against J. C. Logwood, Jr., and others to rescind a contract for the sale of real estate or for damages. From a decree overruling defendants' demurrer, refusing a rescission, and directing a commissioner to ascertain damages, and a decree awarding a recovery, defendants appeal. Affirmed.

OLIVER *v.* COMMONWEALTH.

Sept. 22, 1921.

[108 S. E. 577.]

Intoxicating Liquors (§§ 236 (6½, 7, 20*)—Evidence Held Insufficient to Support Conviction of Possessing, Transporting, and Offering for Sale.—In the prosecution for illegally possessing, transporting, exposing for sale, and soliciting orders for ardent spirits in violation of the Prohibition Law, evidence held insufficient to support a conviction.

Error to Hustings Court of Richmond.

J. J. Oliver was convicted of violating the prohibition law, and he brings error. Reversed and remanded for new trial.

MATNEY et al. *v.* YATES.

Sept. 22, 1921.

[108 S. E. 578.]

1. Trusts (§ 372 (3*)—Evidence Held to Show Release from Trust of Agent Taking Title in Himself.—Where complainants, desiring to

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.